



Reprinted
January 30, 2001

HOUSE BILL No. 1085

DIGEST OF HB 1085 (Updated January 23, 2001 1:23 PM - DI 96)

Citations Affected: IC 20-8.1; IC 22-3.

Synopsis: Supervision of minor employees at night. Prohibits a person, firm, limited liability company, or corporation from permitting a child who is less than 18 years of age and who is employed by the person, firm, limited liability company, or corporation from working in an establishment that is open to the public between the hours of 10 p.m. and 6 a.m. unless the child is accompanied during those hours by another employee who is at least 18 years of age. Provides for a civil penalty by the department of labor for a violation. Provides that if the child is injured while working at night when not accompanied by another employee at least 18 years of age, the amount of compensation and death benefits due through worker's compensation is double the amount that would otherwise be recoverable.

Effective: July 1, 2001.

Cheney

January 8, 2001, read first time and referred to Committee on Labor and Employment.
January 24, 2001, amended, reported — Do Pass.
January 29, 2001, read second time, amended, ordered engrossed.

HB 1085—LS 6187/DI 102+



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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1085

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 20-8.1-4-25.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2001]: **Sec. 25.5. (a) This section does not**
4 **provide an exception to the hours a child is permitted to work**
5 **under section 20 of this chapter.**
6 **(b) It is unlawful for a person, firm, limited liability company,**
7 **or corporation to permit a child who is:**
8 **(1) less than eighteen (18) years of age; and**
9 **(2) employed by the person, firm, limited liability company, or**
10 **corporation;**
11 **to work in an establishment that is open to the public between the**
12 **hours of 10 p.m. and 6 a.m., unless the child is accompanied during**
13 **those hours by another employee who is at least eighteen (18) years**
14 **of age.**
15 SECTION 2. IC 20-8.1-4-31, AS AMENDED BY P.L.234-1999,
16 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2001]: **Sec. 31. (a) A person, firm, limited liability company,**

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or corporation that violates this chapter may be assessed the following civil penalties by the department of labor:

(1) For an employment certificate violation under section 1 or 13 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for a second violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(2) For a posting violation under section 23 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(3) For a termination notice violation under section 11 of this chapter, the following:

(A) A warning letter for any violations identified during an initial inspection.

(B) Fifty dollars (\$50) per instance for each violation identified in a subsequent inspection.

(C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.

(D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:

(i) is identified in an inspection subsequent to the inspection under clause (C); and

(ii) occurs not more than two (2) years after a prior violation.

(4) For an hour violation of not more than thirty (30) minutes

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under section 20 of this chapter, the following:

- (A) A warning letter for any violations identified during an initial inspection.
- (B) Fifty dollars (\$50) per instance for each violation identified in a subsequent inspection.
- (C) Seventy-five dollars (\$75) per instance for a third violation that is identified in a subsequent inspection.
- (D) One hundred dollars (\$100) per instance for a fourth or subsequent violation that:
 - (i) is identified in an inspection subsequent to the inspection under clause (C); and
 - (ii) occurs not more than two (2) years after a prior violation.

(5) For an hour violation of more than (30) minutes under section 20 of this chapter, the following:

- (A) A warning letter for any violations identified during an initial inspection.
- (B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.
- (C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.
- (D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:
 - (i) is identified in an inspection subsequent to the inspection under clause (C); and
 - (ii) occurs not more than two (2) years after a prior violation.

(6) For a hazardous occupation violation under section 25 **or 25.5** of this chapter, the following:

- (A) A warning letter for any violations identified during an initial inspection.
- (B) One hundred dollars (\$100) per instance for each violation identified in a subsequent inspection.
- (C) Two hundred dollars (\$200) per instance for a third violation that is identified in a subsequent inspection.
- (D) Four hundred dollars (\$400) per instance for a fourth or subsequent violation that:
 - (i) is identified in an inspection subsequent to the inspection under clause (C); and
 - (ii) occurs not more than two (2) years after a prior violation.

(7) For an age violation under section 21 or 21.5 of this chapter, the following:

- (A) A warning letter for any violations identified during an initial inspection.



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- 1 (B) One hundred dollars (\$100) per instance for each violation
 2 identified in a subsequent inspection.
 3 (C) Two hundred dollars (\$200) per instance for a third
 4 violation that is identified in a subsequent inspection.
 5 (D) Four hundred dollars (\$400) per instance for a fourth or
 6 subsequent violation that:
 7 (i) is identified in an inspection subsequent to the inspection
 8 under clause (C); and
 9 (ii) occurs not more than two (2) years after a prior violation.
 10 (8) For each minor employed in violation of section 21(b) of this
 11 chapter, the following:
 12 (A) A warning letter for any violations identified during an
 13 initial inspection.
 14 (B) One hundred dollars (\$100) per instance for each violation
 15 identified in a subsequent inspection.
 16 (C) Two hundred dollars (\$200) per instance for a third
 17 violation that is identified in a subsequent inspection.
 18 (D) Four hundred dollars (\$400) per instance for a fourth or
 19 subsequent violation that:
 20 (i) is identified in an inspection subsequent to the inspection
 21 under clause (C); and
 22 (ii) occurs not more than two (2) years after a prior violation.
 23 (b) A civil penalty assessed under subsection (a):
 24 (1) is subject to IC 4-21.5-3-6; and
 25 (2) becomes effective without a proceeding under IC 4-21.5-3
 26 unless a person requests an administrative review not later than
 27 thirty (30) days after notice of the assessment is given.
 28 (c) For purposes of determining whether a second violation has
 29 occurred when assessing a civil penalty under subsection (a), a first
 30 violation expires one (1) year after the date of issuance of a warning
 31 letter by the department of labor under subsection (a).
 32 (d) For purposes of determining recurring violations of this section,
 33 each location of an employer shall be considered separate and distinct
 34 from another location of the same employer.
 35 (e) There is established an employment of youth fund for the
 36 purpose of educating affected parties on the purposes and contents of
 37 this chapter and the responsibilities of all parties under this chapter.
 38 One-half (1/2) of the fund each year shall be used for the purpose of the
 39 education provision of this subsection. This portion of the fund may be
 40 used to award grants to provide educational programs. The remaining
 41 one-half (1/2) of the fund shall be used each year for the expenses of
 42 hiring and salaries of additional inspectors to enforce this chapter under

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1 section 29 of this chapter. All inspectors hired to enforce this chapter
 2 shall also be available to educate affected parties on the purposes and
 3 contents of this chapter and the responsibilities of all parties under this
 4 chapter. The fund shall be administered by the department of labor.
 5 The expenses of administering the fund shall be paid from money in
 6 the fund. The treasurer of state shall invest the money in the fund not
 7 currently needed to meet the obligations of the fund in the same
 8 manner as other public funds may be invested. Interest that accrues
 9 from these investments shall be deposited in the fund. Money in the
 10 fund at the end of a state fiscal year does not revert to the state general
 11 fund. Revenue received from civil penalties under this section shall be
 12 deposited in the employment of youth fund.

13 SECTION 3. IC 22-3-6-1, AS AMENDED BY P.L.31-2000,
 14 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2001]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the
 16 context otherwise requires:

17 (a) "Employer" includes the state and any political subdivision, any
 18 municipal corporation within the state, any individual or the legal
 19 representative of a deceased individual, firm, association, limited
 20 liability company, or corporation or the receiver or trustee of the same,
 21 using the services of another for pay. A parent or a subsidiary of a
 22 corporation or a lessor of employees shall be considered to be the
 23 employer of the corporation's, the lessee's, or the lessor's employees for
 24 purposes of IC 22-3-2-6. If the employer is insured, the term includes
 25 the employer's insurer so far as applicable. However, the inclusion of
 26 an employer's insurer within this definition does not allow an
 27 employer's insurer to avoid payment for services rendered to an
 28 employee with the approval of the employer. The term also includes an
 29 employer that provides on-the-job training under the federal School to
 30 Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth
 31 in IC 22-3-2-2.5.

32 (b) "Employee" means every person, including a minor, in the
 33 service of another, under any contract of hire or apprenticeship, written
 34 or implied, except one whose employment is both casual and not in the
 35 usual course of the trade, business, occupation, or profession of the
 36 employer.

37 (1) An executive officer elected or appointed and empowered in
 38 accordance with the charter and bylaws of a corporation, other
 39 than a municipal corporation or governmental subdivision or a
 40 charitable, religious, educational, or other nonprofit corporation,
 41 is an employee of the corporation under IC 22-3-2 through
 42 IC 22-3-6.



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(2) An executive officer of a municipal corporation or other governmental subdivision or of a charitable, religious, educational, or other nonprofit corporation may, notwithstanding any other provision of IC 22-3-2 through IC 22-3-6, be brought within the coverage of its insurance contract by the corporation by specifically including the executive officer in the contract of insurance. The election to bring the executive officer within the coverage shall continue for the period the contract of insurance is in effect, and during this period, the executive officers thus brought within the coverage of the insurance contract are employees of the corporation under IC 22-3-2 through IC 22-3-6.

(3) Any reference to an employee who has been injured, when the employee is dead, also includes the employee's legal representatives, dependents, and other persons to whom compensation may be payable.

(4) An owner of a sole proprietorship may elect to include the owner as an employee under IC 22-3-2 through IC 22-3-6 if the owner is actually engaged in the proprietorship business. If the owner makes this election, the owner must serve upon the owner's insurance carrier and upon the board written notice of the election. No owner of a sole proprietorship may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If the owner of a sole proprietorship is an independent contractor in the construction trades and does not make the election provided under this subdivision, the owner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(5) A partner in a partnership may elect to include the partner as an employee under IC 22-3-2 through IC 22-3-6 if the partner is actually engaged in the partnership business. If a partner makes this election, the partner must serve upon the partner's insurance carrier and upon the board written notice of the election. No partner may be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received. If a partner in a partnership is an independent contractor in the construction trades and does not make the election provided under this subdivision, the partner must obtain an affidavit of exemption under IC 22-3-2-14.5.

(6) Real estate professionals are not employees under IC 22-3-2 through IC 22-3-6 if:

- (A) they are licensed real estate agents;
- (B) substantially all their remuneration is directly related to sales volume and not the number of hours worked; and

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- 1 (C) they have written agreements with real estate brokers
 2 stating that they are not to be treated as employees for tax
 3 purposes.
- 4 (7) A person is an independent contractor in the construction
 5 trades and not an employee under IC 22-3-2 through IC 22-3-6 if
 6 the person is an independent contractor under the guidelines of
 7 the United States Internal Revenue Service.
- 8 (8) An owner-operator that provides a motor vehicle and the
 9 services of a driver under a written contract that is subject to
 10 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor
 11 carrier is not an employee of the motor carrier for purposes of
 12 IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be
 13 covered and have the owner-operator's drivers covered under a
 14 worker's compensation insurance policy or authorized
 15 self-insurance that insures the motor carrier if the owner-operator
 16 pays the premiums as requested by the motor carrier. An election
 17 by an owner-operator under this subdivision does not terminate
 18 the independent contractor status of the owner-operator for any
 19 purpose other than the purpose of this subdivision.
- 20 (9) A member or manager in a limited liability company may elect
 21 to include the member or manager as an employee under
 22 IC 22-3-2 through IC 22-3-6 if the member or manager is actually
 23 engaged in the limited liability company business. If a member or
 24 manager makes this election, the member or manager must serve
 25 upon the member's or manager's insurance carrier and upon the
 26 board written notice of the election. A member or manager may
 27 not be considered an employee under IC 22-3-2 through IC 22-3-6
 28 until the notice has been received.
- 29 (10) An unpaid participant under the federal School to Work
 30 Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the
 31 extent set forth in IC 22-3-2-2.5.
- 32 (c) "Minor" means an individual who has not reached seventeen
 33 (17) years of age, **and, for purposes of IC 20-8.1-4-25.5, an**
 34 **individual who has not reached eighteen (18) years of age.**
- 35 (1) Unless otherwise provided in this subsection, a minor
 36 employee shall be considered as being of full age for all purposes
 37 of IC 22-3-2 through IC 22-3-6.
- 38 (2) If the employee is a minor who, at the time of the accident, is
 39 employed, required, suffered, or permitted to work in violation of
 40 IC 20-8.1-4-25 or **IC 20-8.1-4-25.5**, the amount of compensation
 41 and death benefits, as provided in IC 22-3-2 through IC 22-3-6,
 42 shall be double the amount which would otherwise be

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recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-10.1-6-7 shall be considered a full-time employee for the purpose of computing compensation for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

(1) If the injured employee lost seven (7) or more calendar days during this period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted.

(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is

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impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-10.1-6-7, the following formula shall be used. Calculate the product of:

(A) the student employee's hourly wage rate; multiplied by

(B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.



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- 1 (6) The geographic service area served by the 46107 zip code and
2 zip codes with the first three (3) digits 462.
3 (7) The geographic service area served by zip codes with the first
4 three (3) digits 470, 471, 472, 474, and 478.
5 (8) The geographic service area served by zip codes with the first
6 three (3) digits 475, 476, and 477.
7 (i) "Medical service provider" refers to a person or an entity that
8 provides medical services, treatment, or supplies to an employee under
9 IC 22-3-2 through IC 22-3-6.
10 (j) "Pecuniary liability" means the responsibility of an employer or
11 the employer's insurance carrier for the payment of the charges for each
12 specific service or product for human medical treatment provided
13 under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or
14 less than the charges made by medical service providers at the eightieth
15 percentile in the same community for like services or products.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1085, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, line 9, delete "remains" and insert "**is**".

Page 1, line 9, delete "after" and insert "**between the hours of**".

Page 1, line 10, delete "before".

Page 1, line 10, after "accompanied" insert "**during those hours**".

and when so amended that said bill do pass.

(Reference is to HB 1085 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 13, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1085 be amended to read as follows:

Page 1, line 3, after "25.5." insert **"(a) This section does not provide an exception to the hours a child is permitted to work under section 20 of this chapter."**

Page 1, line 3, before "It" begin a new paragraph and insert **"(b)"**.

(Reference is to HB 1085 as printed January 25, 2001.)

CHENEY

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